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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------------|---------------------|------------------|
| 09/827,811 | 04/06/2001 | Theodore Van Fossen McConnell | 8240M& | 6863 |

27752 7590 08/01/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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CINCINNATI, OH 45224

EXAMINER

KRAMER, JAMES A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3627

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|----------------------------------|--|
| Office Action Summary | Application No. 09/827,811 | Applicant(s) MCCONNELL ET AL. | |
| | Examiner James A. Kramer | Art Unit 3627 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 and 83-113 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 and 83-113 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/16/05 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-40 and 83-133 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim term “velocity” recited in at least the independent claims (e.g. 1, 12, 17, 34, 83 and 91) lacks a clear definition.

Examiner asserts that one of ordinary skill in the art would recognize the definition of velocity as “a rate of occurrence” (Webster’s II New Collegiate Dictionary). With specific respect to the business methods arts (e.g. retail or online sales) one of ordinary skill would further recognize velocity as sales divided by time (e.g. Q/T where

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Q is quantity and T is time). Examiner notes that Applicant admits as much on page 13, lines 6-22 of the Specification.

However, on page 13, lines 22-28 of the specification Applicant introduces “inter-arrival time” and defines it as, “the number of time units that pass between observations of an item of quantity one (1) or more as it is being detected at one of the sensors/detectors.” Applicant then redefines velocity as, “equal to: {inter-arrival time * item quantity ÷ time/monetary unit}.” In other words, Applicant appears to be redefining velocity as a measure of $(T*Q)/T$. Hence, after the time units, T, in the numerator cancel out the time units, T, in the denominator velocity, as redefined by Applicant becomes simply a measure of quantity, Q.

Additionally, Examiner notes that Independent claims 1 and 12 state that “the observed velocity is an inter-arrival time for said at least one item”. This further adds to the confusion, as this recitation contradicts both definitions of velocity disclosed by Applicant in the Specification on page 13 and discussed in the preceding paragraphs.

Examiner points out that where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999).

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Based on the above analysis, Examiner notes that the written description set forth by Applicant for the term “velocity” is unclear. For the purpose of this Office Action Examiner will apply the ordinary definition of the term velocity (e.g. a rate of sales over a predetermined time).

Examiner recommends Applicant amend the claims to remove the term “velocity” and positively recite the intended definition within the claim.

In addition to the comments made above, Examiner further turns to Claims 7 and 106. These claims recite, “when observed velocity is occurring too slowly is indicative of one of the following conditions.” The language of this claims makes it appear that Applicant’s invention can some how control and/or limit the cause (or indication) of the velocity event announcement to just the four listed conditions. This is simply not possible as there is no way to prevent the cause/indication from being a fifth condition (e.g. people just don’t want to buy the product).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-40 and 83-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al. in view of Tone et al.

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Teicher teaches a sales promotion data processor system including a computer monitoring system having a memory circuit for storage of data, a communications port and a processing circuit (see for example column 6, line 65 through column 7, line 5). Examiner notes that the store computer system represents a computer monitoring system.

Teicher further teaches providing a plurality of sensing circuits that detect at least one item as it is moved to predetermined locations within said predetermined environment (see for example column 6, line 65 through column 7, line 5). Examiner notes that collection purchasing data through POS sensing units represents this limitation.

Teicher further teaches receiving by way of said communications port, identification characteristic information pertaining to said at least one item as it passes one of sensing circuits and receiving time-related information corresponding to when said at least one item was detected by circuits (see for example column 6, line 65 through column 7, line 5). Examiner notes that purchasing pattern information represents identification characteristic information and time-related information.

Teicher further teaches receiving a price reduction criteria of at least one item based on identification criteria and time-related information, comparing an observed velocity (i.e. sales rate) to the price reduction criteria to determine an anomalous condition (e.g. occurring too slowly or occurring too quickly) (see for example column 5, lines 62- column 7, line 5).

Teicher does not specifically teach that the price reduction criteria is a probability pattern.

Tone et al. teaches a method of predicting sales volume using a Poisson probability pattern taking into account causal factors (see for example column 5, lines 10-15 and

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column 8, lines 10-15). Tone further teaches updating the data with respect to the probability pattern (Learning Mode) on a real time basis (see for example column 15, lines 32-35).

It would have been obvious to one of ordinary skill in the art at the time of the invention modify the price reduction criteria of Teicher to be a Poisson probability pattern as taught by Tone. One of ordinary skill in the art would have been motivated to modify the references in order to enable optimum restocking (e.g. restock before a out-of-stock condition) (see column 2, line 55).

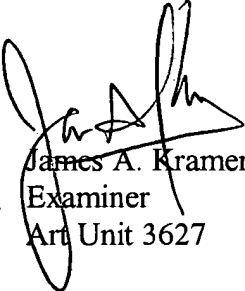
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272 6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James A. Kramer
Examiner
Art Unit 3627

7/21/05

jak